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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-195302

DATE: October 17, 1979

MATTER OF: Lieutenant Commander David J.  
Creahan, Jr., USN

DIGEST: *As has that*  
A service member may execute a justification certificate regarding "unavailability" of United States-flag air carriers, and paragraph M2150-3(1), 1 JTR, defines "United States-flag air carrier passenger service" "unavailable" if a traveler, en route, has to wait 6 hours or more to transfer to a United States-flag air carrier to proceed to destination. However, *the regulation* does not apply to a service member waiting to begin travel but not "en route" from origin airport to destination ~~and does not~~ *or 2* apply if only military reduced rate seats are unavailable when other seats are available. *Somewhat* service member executing such a justification certificate as the basis for United States-flag air carrier "unavailability" when it does not apply may not be reimbursed for travel performed on a foreign-flag air carrier. *Travel as per SAC*

*Request For*

This action is the result of Lieutenant Commander David J. Creahan's appeal from our Claims Division's settlement dated August 22, 1978, which denied reimbursement of transoceanic travel ~~he and his dependents performed~~ on a foreign-flag air carrier incident to a permanent change of station. The disallowance of the claim is sustained.

The main issue in this case is whether the exhaustion of low cost military rate seats on a United States-flag air carrier renders the passenger service on that carrier "unavailable" for travel under Volume 1 of the Joint Travel Regulations (1 JTR), even though there remain for sale other commercial seats on that carrier. We find that the presence or absence of military rate seats has nothing to do with "unavailability" of passenger service under 1 JTR. The incidental issues of whether a traveler can execute a justification certificate for use of a foreign-flag air carrier and whether a JTR time delay provision is applicable in this case for determining passenger service "unavailability" are also raised. Regarding those issues, we find that a traveler can execute a justification certificate, that the JTR provision was inapplicable, and that the Claims Division settlement that there may be no reimbursement for the use of a foreign-flag air carrier is correct.

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*a Navy Officer*  
 Commander Creahan was transferred from Pensacola, Florida, to Subic Bay, Republic of the Philippines. His orders directed the use of Government air transportation for the transoceanic travel and were modified the day he left Pensacola, June 30, 1977, to authorize circuitous travel for his personal convenience. Before departure Commander Creahan had tried to arrange Government air transportation to Hawaii with a 3-day delay and thence to the Philippines, but the final arrangements for this circuitous travel via Hawaii had not been made by the day of departure. However, at this time direct Government air transportation was available to the Philippines. During his travel from Pensacola to the aerial port of departure in California, *in route* he learned that the circuitous travel via Hawaii would require an 8-day delay rather than a 3-day delay in Hawaii as requested. This arrangement was unacceptable to him, and apparently by this time, the direct Government air transportation that was available earlier had filled up. However, Commander Creahan's orders were again modified to allow travel via United States-flag air carriers, with reimbursement limited in accordance with paragraph M4159-5, 1 JTR.

On the same day his orders *in office here* were modified allowing commercial air travel, Commander Creahan purchased tickets on Philippine Airlines, a foreign-flag air carrier, for his travel from San Francisco to Manila. He departed for Manila the same day he purchased the tickets and later justified this travel on a foreign-flag air carrier by executing a justification certificate which stated, *in that the* "American flag carrier (Pan Am) would not have been available *because of war* due to being booked up for a period of 5 days."

Commander Creahan is authorized to execute a justification certificate explaining the necessity for use of a foreign-flag air carrier. See paragraph M2152, 1 JTR, and 4 C.F.R. section 52.2 (1978). However, he has misconstrued in two respects the JTR provision defining "unavailability" of United States-flag air carriers, which states the circumstances under which use of foreign-flag air carriers are justified.

Commander Creahan argues that paragraph M2150-3, item 1, 1 JTR, which provides that passenger service by a United States-flag air carrier will be considered to be "unavailable" when

"the traveler, while en route, has to wait 6 hours or more to transfer to a certificated air carrier to proceed to the intended destination" defines Pan Am "unavailable" because the air carrier was booked up for 5 days. The first respect that he misconstrued this provision is in believing that it applied at all. "En route" under the JTR provision is "addressed to air travel en route from origin airport to destination, or elapsed traveltime. The guidelines establish no policy regarding the initiation of travel or the timing of arrival, and provide no guidance in determining the length of time an employee should delay his departure at origin \* \* \* to facilitate his use of certificated air carrier service." 56 Comp. Gen. 216, 217 (1977). (Merely being in a travel status is not sufficient to satisfy the "en route" requirement of the *regulation*, JTR provision. This JTR *sp. this* (provision was intended primarily to avoid having passengers wait more than 6 hours at an airport after they had begun their air transportation in order to catch a connecting flight that would continue their air transportation on to the intended destination.)

The JTR provision (1 JTR, para. M2150-3, item 6, change 298, Dec. 1, 1977)) that could apply to Commander Creahan's situation, i.e., time delay in waiting for a United States-flag air carrier after the passenger is ready to begin air transportation but before air transportation has actually begun that would make the carrier "unavailable" states a 48-hour rule rather than the 6-hour rule quoted above. However, neither JTR provision actually did apply to Commander Creahan because the term "passenger service" in both provisions cannot be confined to military rate seats, as misconstrued by Commander Creahan.

Commander Creahan's statement of August 3, 1977, relates " \* \* \* I contacted Pan Am for booking. However, I could not get 5 military rate seats on any of 4 consecutive Pan Am flights during the time I wanted to depart because their military allotment of seats was full."

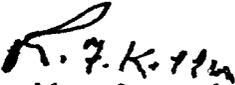
Any commercial seats that had not been sold on any of the initial Pan Am flights Commander Creahan inquired about would have been available passenger service on United States-flag air carriers, and Commander Creahan has not claimed

that this kind of passenger service was unavailable. As a letter to Commander Creahan dated February 6, 1978, from the Navy Regional Finance Center explained, "You are advised that when commercial carrier is authorized subject to reimbursement, there is no requirement to use military rate seats. Regulations require the use of the least costly available scheduled commercial air service over the direct route between the origin and destination." Paragraph M2150-2, 1 JTR, provides: "\* \* \* Passenger or freight service by a certificated air carrier is considered 'available' if the carrier can perform the commercial foreign air transportation required and if the service will accomplish the mission." Therefore, *In addition, the Officer* even though Commander Creahan is authorized to justify United States-flag air carrier "unavailability", he has not done so in this instance because he has not *shown* ~~shown~~ commercial passenger service to have been unavailable.

(In confining his search for passenger service on United States-flag air carriers to military rate seats, Commander Creahan apparently was attempting to minimize his cost (and consequent Government reimbursement).) There are several kinds of military rate seat arrangements that are less expensive than commercial fares. *regulations* (However, the JTR, in implementation of section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517, prescribing very limited exceptions for the mandatory use of United States-flag air carriers, is not primarily *concerned* ~~concerned~~ *are not* with minimizing cost of air transportation, but with utilizing United States-flag air carriers for air transportation in order to produce revenue for the carriers regardless of costs.) See Cost Considerations for Department of Defense Employees under Fly America Act, B-138942, November 6, 1978. The Department of Defense has made elaborate arrangements described in the previously cited decision to alleviate the cost of transporting its employees overseas by air. However, when these arrangements (the low cost military rate seats that were available when Commander Creahan departed on travel from Pensacola) cannot be utilized because of the personal convenience of the traveler (Commander Creahan's attempt to schedule travel via Hawaii with a layover), *(*the commercial arrangements of United States-flag air carriers must be utilized by travelers even though reimbursement to the traveler is limited by regulation to the lower cost seats. *)*

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It is unfortunate <sup>since</sup> that Commander Creahan chose to travel by a foreign-flag air carrier when there was available to him the higher cost commercial passenger service of a United States-flag air carrier. However, ~~because he did so in these circumstances,~~ he may not be reimbursed for that portion of his and his dependents' travel.

  
Deputy Comptroller General  
of the United States